EASEMENTS — EXTINGUISHMENT — UNITY OF POSSESSION. — After the tenant for years in possession of the dominant estate had brought suit for an obstruction of the easement of light, the owner of that estate conveyed his reversion in fee to the owner of the servient. The term had not yet expired. *Held*, that the tenant can recover, as unity of possession is necessary to extinguish the easement. *Richardson* v. *Graham*, [1908] 1 K. B. 39. See NOTES, p. 359.

EMINENT DOMAIN — COMPENSATION — SET-OFF OF BENEFITS CONFERRED ON LAND REMAINING TO OWNER. — C. 16 of the Greater New York charter provided that the dock commissioner might by eminent domain acquire land necessary for the improvement of the water-front, and § 822 provided that where part only of a single tract is taken the compensation to the owner should be the difference between the value of the entire tract and the value of the premises in the condition in which they will be after the part is taken. *Held*, that § 822 violates the constitutional provision that private property shall not be taken for public use without just compensation. *Matter of City of New York*, 190 N. Y. 350.

There is a settled conflict of authority as to whether benefits to the remaining land may be set off against the value of the part taken. See *Bauman* v. *Ross*, 167 U. S. 548; 12 HARV. L. REV. 505. It has heretofore been generally supposed that New York allowed such a set-off. See *Bauman* v. *Ross*, *supra*; *Rexford* v. *Knight*, 15 Barb. (N. Y.) 627. The principal case settles the law in New York and clearly holds that an award shall in no case be made for less than the value of the property actually taken by condemnation. It is to be noted, however, that this case does not overrule the class of cases in which it has been held that a tax or an assessment for local improvement may be set off against an award for property condemned. *Genet* v. *City of Brooklyn*, 99 N. Y. 296.

EQUITY — JURISDICTION — JURISDICTION BY CONSENT OR ESTOPPEL. — The defendant received $3000 under an arrangement by which he was to pay $1200 to the plaintiff, who brought an action of *assumpsit* for his share. By agreement the cause was transferred to the chancery side of the docket. The defendant thereupon demurred on the ground that the plaintiff had an adequate remedy at law. *Held*, that equity may take jurisdiction of the cause and that the defendant is estopped from questioning its jurisdiction. *Darst* v. *Kirk*, 82 N. E. 862 (Ill.).

Consent or estoppel cannot ordinarily extend a court's powers. *Klingelhoefer* v. *Smith*, 171 Mo. 455. The jurisdiction of equity, although not so exactly defined as that of courts of law, is restricted, in general, to cases where there is no adequate legal remedy. *Bushnell* v. *Avery*, 121 Mass. 148; but see *Mellen* v. *Moline Works*, 131 U. S. 352. Both at law and in equity, however, a party may waive his right to object to the court's lack of authority over his person by mere failure to exercise it. *Burnley* v. *Cook*, 13 Tex. 586. This decision goes further in permitting the parties to extend equity's jurisdiction to a suit in which there is an ample remedy at law. Consent to the jurisdiction, however, is stronger than a waiver by failure to object, since allowing the agreement to be recalled is in itself inequitable. The present case is not alone in allowing equity to proceed after such a waiver or estoppel. *Champion* v. *Grand Rapids, etc., Ry.*, 145 Mich. 676; *Mertens* v. *Roche*, 39 N. Y. App. Div. 398. But in cases of this type equity is not bound to take jurisdiction, and does so at the court's discretion. *Hoagland* v. *Supreme Council*, 70 N. J. Eq. 607. The adoption of this principle of extending jurisdiction by consent illustrates the tendency to merge the two systems of law and equity.

FRANCHISES — POWER TO REVOKE INDIRECTLY BY GRANTING COMPETING FRANCHISE. — The defendant, under a permit from the proper authorities, built a highway bridge which diverted the travel from an ancient ferry owned by the plaintiff. *Held*, that an injunction will not issue. *Dibden* v. *Skirrow*, [1908] 1 Ch. 41.

The right to maintain a ferry can be acquired only by grant from the sovereign or by prescription, and such a right is ordinarily to be construed with great strictness against the claimant. *Charles River Bridge* v. *Warren Bridge*, 11 Pet. (U. S.) 420. Formerly ferry franchises, however acquired, were held to be exclusive in their nature. See *Huzzey* v. *Field*, 2 C. M. & R. 432, 440. Still the franchise did not include all modes of transportation, for the ferry owner himself could not establish a bridge. See *Payne* v. *Partridge*, 1 Salk. 12. Hence it is doubtful if even under the early law a ferry franchise would have been infringed by the grant of a bridge franchise. The later authorities, however, so modify the law that unless the franchise is expressly made exclusive, the sovereign does not lose his right to grant a competing ferry. *Guen* v. *Ivy*, 45 Fla. 338; *Power* v. *Athens*, 99 N. Y. 592. Moreover, a bridge franchise is not infringed by the grant of a ferry privilege. *Parrott* v. *City of Lawrence*, 2 Dill. (U. S. C. C.) 332. No reasonable ground appears for distinguishing that case from one where the ferry is first acquired. The present case, therefore, seems correct on principle, and it is supported by the reasoning of a previous English decision. See *Hopkins* v. *Railway*, 2 Q. B. D. 224.

GENERAL AVERAGE — NATURE, CAUSE, AND MANNER OF SACRIFICE — EFFECT OF INHERENT VICE OF CARGO UPON THE RIGHT TO CONTRIBUTION. — Y & Co. shipped coal upon G & Co.'s vessel. The cargo ignited by spontaneous combustion, whereupon water was poured into the hold, damaging the unburned coal. In respect to this damage, Y & Co. claimed a general average contribution from G & Co. *Held*, that, in the absence of negligence on their part, Y & Co. are entitled to contribution. *Greenshields, Cowie & Co.* v. *Stephens & Sons*, [1908] 1 K. B. 51.

Apparently no case decides the shipper's right to contribution in general average where the condition of his goods produced the danger and he was guilty of no negligence. See CARVER, CARRIAGE BY SEA, 4 ed., 443. Formerly, where a sacrifice was necessitated by the negligence of one party to a maritime venture, he could not claim contribution from the other interests. *Schloss* v. *Heriot*, 14 C. B. (N. S.) 59; *Snow* v. *Perkins*, 39 Fed. 334. It is only equitable that he who caused the damage should bear the burden. See *Strang* v. *Scott*, 14 App. Cas. 601, 608; *Pacific Mail S. S. Co.* v. *N. Y. H. & R. Min. Co.*, 74 Fed. 564, 567. Nevertheless, recent English decisions allow contribution to a party free from cross-liability, whether negligent or not. *Milburn & Co.* v. *Jamaica, etc., Co.*, [1900] 2 Q. B. 540. By this test the shipper loses contribution because of defects in his goods only where the "inherent vice" is actionable. Another exception to the general right of contribution occurs where a deck cargo is jettisoned, such cargo being held a menace to the common interests of the venture. In the absence of special custom, the innocent owner thereof cannot claim contribution from co-shippers ignorant of the deck shipment. See *Strang* v. *Scott*, *supra*. A similar rule might well be applied to below-deck shipments of goods inherently dangerous, but an ordinary commodity like coal can hardly be so considered.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — PROMISE TO MARRY AFTER DEATH OF EXISTING WIFE. — The plaintiff, knowing that the defendant had a wife living, agreed to marry the defendant when his wife died. *Held*, that the contract is void as against public policy. *Spiers* v. *Hunt*, 24 T. L. R. 183 (Eng., K. B. Div., Dec. 12, 1907).

This decision follows the American authorities. For a discussion of a recent English case reaching an opposite result, see 21 HARV. L. REV. 58. The court distinguishes the present case on the ground that here the motive for the promise was illegal.

INFANTS — UNBORN CHILDREN — WHEN CHILD EN VENTRE SA MÈRE CONSIDERED BORN. — Legacies were left "to each of my great-nieces born previously to the date of this my will." Five months later a great-niece was born, and five months thereafter the testator died. *Held*, that the child was entitled to a legacy. *In re Salaman*, [1908] 1 Ch. 4. See NOTES, p. 360.